IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

RCRev..No. 84 of 2007()

RCA.17/2004 of DISTRICT COURT, KALPETTA
RCP.5/2000 of MUNI-MAGI.COURT,MANANTHAVADY
(IA 433/2003)
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APPELLANTS/RESPONDENTS:
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1. K.T.ASYA UMMA, AGED 67 YEARS
W/O.LATE P.O.ABDUL KHADAR HAJI,
THAYIF MANZIL, ELAVYAVOOR AMSOM & DESOM,
THAZHENCHOWA POST, KANNUR.

2. K.T.LATHEEF,
AGED 54 YEARS, S/O.LATE P.O.ABDUL KHADAR HAJI,
THAYIF MANZIL, ELAVYAVOOR AMSOM & DESOM,
THAZHECHOWA POST, KANNUR.

3. K.T.BASHEER, AGED 51 YEARS,
S/O.LATE PO.ABDUL KHADAR HAJI
THAYIF MANZIL, ELAVYAVOOR AMSOM & DESOM,
THAZHECHOWA POST, KANNUR.

4. K.T.SHAHUL HAMEED, AGED 48 YEARS,
S/O.LATE PO.ABDUL KHADAR HAJI,
THAYIF MANZIL, ELAVYAVOOR AMSOM & DESOM.,
THAZHECHOWA POST, KANNUR,.

5. K.T.NASEEMA,
D/O.LATE PO.ABDUL KHADAR HAJI,
THAYIF MANZIL, ELAVYAVOOR AMSOM & DESOM,
THAZHECHOWA POST, KANNUR.

(.....2)

6. K.T.RAFI, AGED 44 YEARS,
S/O.LATE P.O, ABDUL KHADAR HAJI,
THAYIF MANZIL, ELAVYAVOOR AMSOM & DESOM,
THAZHECHOWA POST KANNUR.

7. K.T.THEZALI,
D/O.LATE PO, ABDUL KHADAR HAJI,
THAYIF MANZIL ELAVYAVOOR AMSOM & DESOM,
THAZHECHOWA POST, KANNUR.

8. K.T.IQUBAL, AGED 39 YEARS,
S/O.LATE PO ABDUL KHADAR HAJI,
THAYIF MANZIL ELAVYAVOOR AMSOM & DESOM,
THAZHECHOWA POST, KANNUR.

9. K.T.NAZAR, AGED 37 YEARS,
S/O.LATE PO.ABDUL KHADAR HAJI,
THAYIF MANZIL, ELAVYAVOOR AMSOM & DESOM,
THAZHECHOWA POST, KANNUR.

10. K.T.FOUZIYA,
S/O.LATE PO.ABDUL KHADAR HAJI,
THAYIF MANZIL, ELAVYAVOOR AMSOM& DESOM,
THAZHECHOWA POST, KANNUR.

BY ADV. SRI.K.M.FIROZ

RESPONDENTS: RESPONDENT/PETITIONER:

I.V.RAMAKRISHNA NAIDU,
S/O.I.V.NAIDU, AGED 66 YEARS
DOWN BAZAR, MANANATHAVADY, BY POWER OF ATTORNEY HOLDER, P.MUKUNDAN, S/O.KRISHNAN,"DEEPALAYAM",DOWN BAZAR, MANANTHAVADY.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 03/10/2007, ALONG WITH RCR NO. 85 OF 2007 & RCR NO. 86 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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R.C.R.NOs.84, 85 & 86 of 2007

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Dated this the 3rd day of October, 2007

JUDGMENT

Balakrishnan Nair J.

The petitioners in these revisions are the legal heirs of the original tenant. The respondent is the landlord.

2. During the pendency of R.C.P.No.5/2000 filed by the landlord to evict the tenant, the latter died. The date of death was 18.11.2002. The death was reported by the counsel for the tenant on 25.11.2002. The landlord, on 5.2.2003 filed I.A. No.124/2003 for impleading the legal heirs of the original tenant. I.A. No.125/2003 was also filed to carry out the consequential amendment of the R.C.P. The legal heirs of the tenant resisted the applications contending that the application for impleading is barred by limitation in view of the time limit of 30 days fixed in Rule 10 of the Kerala Buildings (Lease & Rent Control) Rules. It was contended on behalf of the landlord that the application was filed in time. The Rent Controller heard both sides and dismissed the application for impleading on the ground of delay in filing it. As a consequence, the application for amendment was also dismissed. Those orders were not challenged in any

proceedings. Subsequently, the landlord filed six applications. I.A. No.435/2003 was filed for condoning the delay in filing the impleading application, I.A.No.437/2003 was for impleading the legal heirs, I.A. No.432/2003 was to condone the delay in filing the application to set aside abatement, I.A.No.434/2003 was filed to set aside the abatement, I.A.No.433/2003 was to restore the Rent Control Petition and I.A. No.436/2003 was filed to carry out the consequential amendments in the R.C.P. The petitioners submit, the Rent Controller allowed the application for impleading, application for setting aside abatement and application for restoration of the R.C.P. by cryptic orders. Those orders were challenged in appeals by filing R.C.A. Nos.17, 18 and 19 of 2004. All the three appeals were heard and dismissed by the appellate authority. Hence, these three revision petitions.

3. According to the revision petitioners, since the earlier application for impleading was dismissed on merits, the same will operate as a res judicata and there cannot be any second application for the same relief. The appellate authority held that since the R.C.P. was abated after 30 days, the earlier applications filed and their subsequent dismissal were of no consequence. It was also held that technicalities should not be allowed to defeat the cause of justice and on the above ground, rejected the contentions of the revision petitioners. Before us also, the learned counsel for the

petitioners raised the above said contention that since the earlier application to implead the legal heirs was dismissed on merits, the subsequent application for the same is barred by res judicata. In support of the said submission, learned counsel relied on a decision of this court in **Sumathy v. Dakshayani** (1987 (1) KLT 141) and a decision of the Supreme Court in **C.V. Rajendran and another v. N.M. Muhammed Kunhi** (AIR 2003 SC 649). We notice that both the decisions cited by the learned counsel for the petitioners relate to final orders and therefore the principles laid down therein cannot be applied to the facts of this case dealing with interlocutory applications. In this case, we notice that the R.C.P. was abated on completion of 30 days after the date of death of the tenant. Therefore, the subsequent petitions were incompetent . Therefore, we agree with the appellate authority that dismissal of such applications will not operate as a res judicata or bar a fresh application.

In the result, the revision petitions fail and they are dismissed.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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